

**SYNOPSIS OF CRIMINAL OPINIONS IN THE MISSISSIPPI SUPREME COURT
HANDED DOWN MAY 27, 2010**

Flowers v. State, No. 2009-KA-00387-SCT (Miss. May 27, 2010)

CRIME: Statutory Rape

SENTENCE: 30 years

COURT: Leflore County Circuit Court

TRIAL JUDGE: Hon. Jannie M. Lewis

APPELLANT ATTORNEY: Ben Suber

APPELLEE ATTORNEY: Stephanie B. Wood

DISTRICT ATTORNEY: W. Dwayne Richardson

DISPOSITION: Reversed. Lamar, Justice, for the Court. Waller, C.J., Carlson and Graves, P.JJ., Dickinson, Randolph, Kitchens, Chandler and Pierce, JJ., Concur.

ISSUE: Whether the indictment for statutory rape was fatally flawed.

FACTS: Raphael Flowers was indicted on two counts of statutory rape and two counts of sexual battery, offenses that were alleged to have occurred in April 2006. Flowers, who was eighteen years old at the time of the offense, was charged with having sexual relations with four boys, all under the age of fourteen, in an abandoned house. In Count I, Flowers was convicted of statutory rape for having "sexual intercourse" with a seven-year-old boy. The trial judge declared a mistrial in Counts II, III, and IV, after the jury was unable to reach a unanimous verdict. Flowers raised three issues on appeal. Although not raised by either party at trial or on appeal, the Court addressed whether or not the indictment was fatally flawed.

HELD: The Court found plain error in Flowers's indictment. At the time of the offense in April 2006, the statutory rape statute (§ 97-3-65(6)) stated, "... 'sexual intercourse' shall mean a joining of the sexual organs of a male and female human being in which the penis of the male is inserted into the vagina of the female." In 2007, the statute was amended to add "or the penetration of the sexual organs of a male or female human being in which the penis or an object is inserted into the genitals, anus or perineum of a male or female."

==>"We find that Flowers's due-process rights were disregarded and the Ex Post Facto Clause was violated when he was convicted and sentenced for the crime of statutory rape, as his alleged misconduct did not fall under the definition of statutory rape in effect at the time of the offense in 2006."

==>Flowers's conduct could have been charged as sexual battery, but not as statutory rape under Section 97-3-65. The case was reversed and remanded to await action of the grand jury.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63582.pdf>

Harness v. State, No. 2007-CT-01415-SCT (Miss. May 27, 2010)

CRIME: Aggravated DUI

SENTENCE: 25 years with 10 suspended and 5 years supervised probation

COURT: Hinds County Circuit Court

TRIAL JUDGE: Bobby Burt Delaughter

APPELLANT Attorney: Imhotep Alkebu-lan, William R. Labarre, Virginia Lynn Watkins, and Jaison O. Harness (Pro Se)

APPELLEE ATTORNEY: Ladonna C. Holland

DISTRICT ATTORNEY: Robert Shuler Smith

DISPOSITION: COA reversed, conviction reversed and remanded. Kitchens, Justice, for the Court. Waller, C.J., Carlson and Graves, P.J.J., Dickinson, Randolph, Lamar and Chandler, JJ., Concur. Pierce, J., Dissents with Separate Written Opinion.

ISSUE: Whether the State wrongfully disregarded defendant's request for an independent blood test before the sample was destroyed by the state crime lab.

FACTS: On August 22, 2003, Jaison Harness and Clyde Hampton were involved in a head-on collision. Empty beer cans were found at the scene, and an unopened bottle of brandy was on the passenger floorboard of Harness's vehicle. Harness told police that he had been drinking earlier but denied that he was drunk. Police asked medical personnel to draw blood samples from both men. Hampton eventually died. The first analysis of Harness's blood was performed on October 16, 2003, and the test was inconclusive. The crime lab performed a second test a week later on October 23, 2003, which showed a BAC of 0.11 %. No further tests were performed and the results were sent to the prosecutor. The prosecutor was also put on notice that the sample would be destroyed in 6 months unless the crime lab was notified to preserve it. Harness was indicted on April 8, 2004. On July 22, 2004, Harness received a copy of the crime lab report. On the same day, he filed a motion for discovery requesting the blood sample used in the blood-alcohol analysis for independent testing. When the State failed to produce the blood sample, Harness filed a motion to compel on September 30, 2004. A hearing was set for November 8, 2004, but before the hearing, the DA's office discovered that the sample had been destroyed on October 7, 2004. The trial court refused to suppress the evidence and the Court of Appeals affirmed, finding that since Harness's BAC was well-above the legal limit, the sample lacked any exculpatory value. Harness was granted certiorari.

HELD: The U.S. Supreme Court has held that when preservation of evidence is at issue, due process of law is denied only where the destroyed evidence was expected to play a significant role in the defense. The court must look at whether (1) the evidence possessed exculpatory value prior to its destruction, (2) the evidence was of such a nature that the defendant could not have used other comparable evidence to mount a defense, and (3) that the State acted in bad faith in failing to preserve the evidence in question. The COA erred in finding the first prong dispositive.

==>In Mississippi, a defendant has a statutory right to independent testing of blood samples in DUI cases. "This statutory right is firmly rooted in due process concerns, to ensure the accused's ability

to mount a defense and thoroughly confront the evidence against him.” Mississippi law affords a greater level of due process protection than federal constitutional standards. The unreasonable denial of a defendant's request for a blood test pursuant to §63-11-13 amounts to a denial of due process of law. The unreasonable denial of a request for an independent test is also a due process violation.

==> The defendant had no authority to call the crime lab and request that the sample be preserved. Only the prosecutor could do so. “That the crime laboratory's first test was inconclusive renders the State's disregard of Harness's request even more disturbing.” The DA's indifference to the defendant's efforts to obtain independent testing, which is both a statutory and constitutional right, is tantamount to a willful disregard of his duty to preserve evidence that might be expected to play a significant role in the suspect's defense.

==>The Court went on to note that if Harness is retired and the blood test is admitted at trial, Harness would be entitled to a negative inference instruction regarding the blood test results.

PIERCE, JUSTICE, DISSENTING:

==>Justice Pierce did not agree the three part test dealing with the destruction of evidence found in *California v. Trombetta*, 467 U.S. 479 (1984), and its progeny, should be disregarded for a higher standard in this state. Further, “[W]hile the State's inaction is admittedly negligent, all parties agreed that the State's inaction was not intentional. Thus, the district attorney's inaction did not amount to a willful disregard of the duty to preserve evidence that ‘might be expected to play a significant role in the suspect's defense.’” He would affirm the trial court and the COA.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDLList/..%5COpinions%5CCO63058.pdf>

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